

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

JOHN K. WASHINGTON and
J. WASHINGTON COMPANY, INC.

V.

THE UNITED STATES OF AMERICA

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CASE NO. 4:07cv412

MEMORANDUM OPINION AND ORDER DENYING MOTION TO DISMISS

Now before the Court is the United States' Motion to Dismiss the Complaint of J. Washington Company, Inc. (Dkt. 19). In this case, Plaintiffs John K. Washington and the J. Washington Company, Inc. seek a determination from the Court that the penalties allegedly assessed against them by the Internal Revenue Service (IRS) under 26 U.S.C. § 6700 of the Internal Revenue Code are improper and to obtain a refund of a portion of those penalties paid.

In its motion, the United States seeks to dismiss the claims of Plaintiff J. Washington Company, Inc., claiming that no assessments were ever made against the company, but rather only against Plaintiff John K. Washington individually. In response, Plaintiff asserts that 23 of the 95 penalty assessments at issue were made against EIN 75-2650432, which is the taxpayer number for J. Washington Co., Inc.— not John K. Washington individually. Plaintiff has further attached documentary evidence in support of this allegation. The United States did not file any reply seeking to rebut this assertion or challenge the evidence presented.

The Court finds that because the evidence before the Court indicates that some of the assessments at issue appear to have been made against J. Washington Co., Inc., the grounds for Defendant's motion fails. Therefore, the motion to dismiss is DENIED.

SO ORDERED.

SIGNED this 14th day of July, 2008.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE